IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Crl.MC.No. 3757 of 2007()

ST.109/2006 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER:

C.K.MOHAMMED ASHRAF, S/O.VEERAN,
KILIKOTTUTHODUVIL, MONGAM P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. M/S.SHRIRAM INVESTMENT LTD., CALICUT
REPRESENTED BY POWER OF ATTORNEY HOLDER
MR.PRAKASH, S/O.K.MADHAVAN, SREEPADAM BUILDINGS,
KOZHIKODE 32

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3757 of 2007

Dated this the 17th day of December, 2007

O R D E R

Petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The complainant alleges - in the proof affidavit, that there was an agreement executed between the complainant and the petitioner and that cheque is issued for the due discharge of a liability under the said agreement. In the complaint, such detailed averments were not, of course, there. The petitioner has already appeared before the learned Magistrate and has been enlarged on bail, it is submitted. The petitioner has now come to this Court with this petition under Section 482 Cr.P.C. The short prayer is that the extraordinary inherent powers under Section 482 Cr.P.C may be invoked to quash the complaint filed against the petitioner by the 2nd respondent/complainant.

2. What is the reason ? The short contention urged is that there was no agreement between the parties and that the cheque was not issued for the due discharge of any legally enforcible debt/liability. The petitioner contends that the cheque was issued by the petitioner to another financier M/s.City Corp Finance Ltd. The complainant/2nd respondent must, it is assumed, have obtained the blank signed cheque from the said M/s.City

Corp Finance Ltd. and is misutilising the same to launch this prosecution against the petitioner. The notice of demand addressed to the petitioner was returned unclaimed.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. The complicated disputed question of fact, as to whether there was an agreement between the petitioner and the complainant and whether the cheque was issued for the due discharge of liability under the said agreement, cannot obviously be attempted to be resolved by this Court with the available inputs in proceedings under Section 482 Cr.P.C. The petitioner must raise all his contentions before the learned Magistrate to explain the possession of the cheque by the complainant in the case. I am not satisfied that there is any justification or merit in the prayer to invoke the powers under Section 482 Cr.P.C to quash the proceedings initiated against the petitioner.

4. This Crl.M.C is accordingly dismissed. I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioner to raise all appropriate, relevant and necessary contentions before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-